

ALL NIPPON AIRWAYS CO., LTD., CARGO CONNECTION LOGISTICS CORP. and C.M. LOGISTICS, INC.

Defendants.

Plaintiff, Nippon Express Co., Ltd. ("NE"), by its attorneys, Nicoletti Hornig & Sweeney, alleges upon information and belief, as follows:

PARTIES

- 1. NE is a corporation duly organized corporation existing under and by virtue of the laws of Japan with a place of business located at 9-3, 1-Chome, Higashi-Shimbashi, Minato-Ku, Tokyo, Japan.
- 2. Defendant All Nippon Airways Co., Ltd. ("ANA"), is a corporation existing under and by virtue of the laws of Japan with a place of business located at 1251 Avenue of the Americas, #820, New York, New York 10020.

- 3. Defendant Cargo Connection Logistics Corp. ("CC") is a corporation existing under and by virtue of one of the states of the United States with an office and place of business located at 600 Bayview Avenue, Inwood, New York 11096.
- 4. Defendant C.M. Logistics, Inc. ("CM") is a corporation existing under and by virtue of the laws of one of the states of the United States with a place of business located at P.O. Box 248387, Columbus, Ohio 43224.
- 5. At all times relevant hereto defendant ANA was engaged in the transportation of cargo for hire as an air carrier, trucker, broker, freight forwarder, or otherwise.
- 6. At all times relevant hereto defendant CM was engaged in the transportation of cargo for hire as an air carrier, trucker, broker, freight forwarder, or otherwise.
- 7. At all times relevant hereto defendant CC was engaged in the transportation of cargo for hire as an air carrier, trucker, broker, freight forwarder, or otherwise.

JURISDICTION

8. Jurisdiction and venue over the parties and subject matter is appropriate under 28 U.S.C. §1331 as this matter is governed by the Convention for the Unification of Certain Rules Relating to International Transportation by Air, 49 Stat. 3000, T.S. No. 876 (1934) (reprinted in note following 49 U.S.C. §40105) (commonly known, and referred to herein, as the "Warsaw Convention") or the Convention for the Unification of Certain Rules for International Carriage by Air, May 28, 1999 (2003), Treaty Doc. No. 106-45, at 27, 2242 U.N.T.S. 350, reprinted in 1999 WL 33292734 (2000) (commonly known, and referred to herein, as the "Montreal Convention"). These conventions will be referred to herein collectively as Warsaw/Montreal.

9. The Court has federal question subject matter jurisdiction pursuant to 49 U.S.C. §14706 (the "Carmack Amendment" to the Interstate Commerce Act) as to the defendants.

THE LOSS

- 10. On or about the dates and at the port of shipment stated in Schedules "A", "B", and "C" attached hereto and by this reference made a part hereof, there was delivered to the defendants in good order and condition, the shipments described in Schedules "A", "B", and "C", which defendants received, accepted and agreed to transport for certain consideration to the destinations stated in Schedules "A", "B", and "C."
- 11. Thereafter, defendants delivered the shipments, however, described in Schedules "A", "B", and "C" short, missing and/or damaged.
- 12. By reason of the premises, the defendants breached, failed and violated their duties and obligations as air carrier, common carrier, trucker, bailee, warehousemen, broker and were otherwise at fault.
- 13. Plaintiff was the consignee, owner, owner in fact, or contractually and/or legally liable and/or responsible for the shipments described in Schedules "A", "B", and "C", and brings this action on its own behalf and as agent for the interest of all parties who may be or become interested in the said shipments, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.
- 14. Plaintiff has duly performed all duties and obligations on its part to be performed.
- 15. By reason of the premises, plaintiff has sustained damages as nearly as same can now be estimated, no part of which has been paid, in the total amount of \$593,952.94 for the

damages sustained to the cargo described in Schedules "A", "B", and "C" as a result of the fault of defendants as described herein in the amount of \$593,952.94.

FIRST CAUSE OF ACTION

- 16. At all material times, defendants were charged with the exclusive care, custody and control over the cargo.
- 17. Defendants, as bailee of the goods and/or as carrier, owed a duty to safely and securely transport the cargo as agreed and to turn over the cargo to its proper recipient in the same good order and condition as originally received, at the conclusion of transit.
- 18. Defendants did not deliver the goods in the same good order and condition as required and breached its duty as bailee and/or as carrier.
- 19. By reason of the foregoing, plaintiff was damaged in an amount in excess of \$593,952.94 together with interest and the costs of this action.

SECOND CAUSE OF ACTION

- 20. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "19" as though more fully set forth herein at length.
- 21. The loss and damage to the cargo which occurred while in defendants care, custody and control is a breach of defendants duties and obligations under the Warsaw/Montreal Conventions in that defendants are air carriers who accepted the cargo in good order and condition but failed to deliver the same in good order and condition at destination.
- 22. By reason of the foregoing, plaintiff was damaged in an amount in excess of \$593,952.94 together with interest and the costs of this action.

THIRD CAUSE OF ACTION

- 23. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "22" as though more fully set forth herein at length.
- 24. The loss and damage to the cargo which occurred while in defendants care, custody and control was the result of defendants gross negligence.
- 25. By reason of the foregoing, plaintiff was damaged in an amount in excess of \$593,952.94 together with interest and the costs of this action.

AS AND FOR A FOURTH CAUSE OF ACTION AS AND AGAINST DEFENDANTS

- 26. Plaintiff repeats and realleges each and every allegation contained in paragraphs "1" through "25" as though more fully set forth herein at length.
- 27. Defendants received the cargo in good order and condition, which defendants received, accepted and agreed to transport for certain consideration to Miami.
- 28. On or about November 12, 2007, a motor vehicle accident occurred, wherein the container and its contents containing the shipment was caused to be damaged.
- 29. Defendants failed to make delivery of said shipments in like good order and condition as when shipped, delivered to and received by them, but on the contrary, lost or permitted the shipment to be damaged and impaired in value, all in violation of defendants obligations and duties as common carriers of merchandise by land for hire.
- 30. By reason of the premises, the defendants breached their obligations to transport the goods, and any obligations otherwise provided by the Carmack Amendment or otherwise.
- 31. The Plaintiff brings this action on its own behalf and as agent and/or trustee on behalf of and for the interest of all parties who may be or become interested in the shipment, as

their respective interests may ultimately appear, and the Plaintiff is entitled to maintain this action.

- 32. Plaintiff has performed all conditions on their part to be performed.
- 33. By reason of the premises, the plaintiff has suffered damages in the amount of \$593,952.94, as near as it can now be estimated.

WHEREFORE, plaintiff demands judgment on the First, Second, Third, and Fourth Causes of Action against defendants All Nippon Airways Co., Ltd., Cargo Connection Logistics Corp. and C.M. Logistics, Inc. for \$593,952.94 with interest and cost of this suit.

Dated: New York, New York November 10, 2009

Yours, etc.,

NICOLETTI HORNIG & SWEENEY Attorneys for Plaintiff Nippon Express Co., Ltd.

Samuel C. Coluzzi (SC-8975)

Wall Street Plaza, 88 Pine Street, 7th Floor

New York, New York 10005

(212) 220-3830

NH&S File No.: 15000035 FMM/SCC

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SCHEDULE A

HAWB:

NEC 2066 4044

MAWB:

ANA 205-9353-0850

To:

Miami via Dulles Airport, Washington, D.C.

From:

Tokyo, Japan

Damage/Nature of Claim: Physical Damage/Shortage/Non-Delivery

Date of Loss:

November 12, 2007

Cargo:

Electronics/Goods

Amount:

\$275,412.87

NH&S File No.:

15000035 FMM/SCC

See Annexed Ex. "1"

EXHIBIT "1"

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SCHEDULE B

HAWB:

NEC 2069 0331

MAWB:

ANA 205-9533-2272

To:

Miami, Florida via Dulles Airport, Washington, D.C.

From:

Tokyo, Japan

Damage/Nature of Claim: Physical Damage/Shortage/Non-Delivery

Date of Loss:

November 12, 2007

Cargo:

Electronics/Goods

Amount:

\$84,013.17

NH&S File No.:

15000035 FMM/SCC

See Annexed Ex. "2"

EXHIBIT "2"

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Case 1:09-cv-09350-PAC Document 1 Filed 11/10/2009 Page 13 of 17

SCHEDULE C

HAWB:

NEC 2066 4011 / NEC 2066 4033

MAWB:

ANA 205-935-0774

To:

Miami, Florida via Dulles Airport, Washington, D.C.

From:

Tokyo, Japan

Damage/Nature of Claim: Physical Damage/Shortage/Non-Delivery

Date of Loss:

November 12, 2007

Cargo:

Electronics/Goods

Amount:

\$234,526.90

NH&S File No.:

15000035 FMM/SCC

See Annexed Ex. "3"

EXHIBIT "3"

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Shipper's Name and		Shipper's Account Num	A	Wayhill		THE CANADA
NIPPON E	XPRESS CO., AIR SERVICE	ETD. BRANCH	ISSSURGED!	**375≠90** HA	NEDA : A IRPORT	North Company of the Company of the
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Case 1:09-cv-09350-PAC Document 1 A Filed 11/10/2009 Page 16 of 17 4 0 1 1

Shipper's Name and Address CAHON INC.	Shipper's Account Number (00) - C0001	Not negotiable Air Waybill
TGKYO, JAPAN		9-3,1-CHOME, HIGASHI-SHIMBASHI HINATO-KU, TOKYO, JAPAM.
Cunsignee's Name and Address	Consignee's Account Number	Copies 1,2 and 3 of this Air Waybill are originals and have the same validity
CARON LATIN AMERIC		It is agreed that the goods described herein are accepted in apparant good order and condition. [except as noted] for carriage SUBJECT TO THE CONJITIONS OF CONTRACT ON THE HEVERSE HEREOF, ALL GOODS MAY BE CARRIED BY ANY OTHER MEANS INCLUDING ROAD OR ANY OTHER CARRIED WILLIAMS BOAD OR ANY OTHER CARRIED WILLIAMS SPECIFIC CONTRATY INSTRUCTIONS ARE GIVEN HEREON BY THE SHEPPER, AND SHEPPER AGREES THAT THE SHEPMENT MAY BE CARRIED WA INTERMEDIATE.
703 VATERFOR) WAY KIAKI ISSUM Carrier's Name and City	SHITE 400, FL 33126	STOPPING PLACES WHICH THE CARRIER DEEMS APPROPRIATE. THE STATES AT LETT AND DRAWN TO THE NOTICE CONCERNING CAPRIER'S LIMITATION OF LIABILITY. Shipper may increase such limitation of liability by declaring a higher value for carriege and paying a supplemental charge if required.
CANON KA (1 NIPPON EXPRES	35-095) S CO.,LTD.	Accounting information : PREPAID
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2) CANON LAT)7-114 HIANI,FL 33 FIN AMERICA, INC., - 33126, ATTN:INP	172 ATTN.IMPORT HGR. TEL.305-592-9410 703 WATERFORD WAY SUITE 400 PORT & EXPORT DPT PHONE:(305)260-7435
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